4. It renders one of the most important conveniences of modern life susceptible at any moment of being used as an instrument of infinite mischiefs in the community. It is not necessary to enumerate these mischiefs. Any one can picture to his own mind what would be the condition of things in any neighborhood, if its whole correspondence were exposed to the public gaze. A single instance, in which the veil of confidential secrecy is thrust aside, will introduce some of these evils, but it will suggest the possibility that any moment all the others may follow.

T. M. C.

RECENT AMERICAN DECISIONS.

Supreme Court of the United States.

THOMAS SNELL ET AL. *v.* THE ATLANTIC FIRE AND MARINE INSURANCE COMPANY.

Courts of equity have jurisdiction to relieve against mutual mistakes of the parties in the execution of written contracts, so as to make them conform to the real intention of the parties.

Such mistakes may be shown by parol evidence, but in all such cases parol evidence is to be received with great caution: and, where the mistake is denied, should never be made the foundation of a decree variant from the written contract, except it be of the clearest and most satisfactory character.

It is a general rule, that a mere mistake of law, stripped of all other circumstances, is not a ground for reforming a written contract founded on such mistake.

When, however, the mistake has arisen from a misapprehension of a rule of law, unaccompanied by any negligence on the part of the party seeking relief, or any *laches* in discovering and alleging the mistake, and the denial of relief by reforming the contract would enable the other party to obtain an unconscionable advantage, a court of equity—the mistake being clearly proved—will reform the instrument. In all such cases, the court will lay hold of any additional circumstances, fully established, which will justify its interposition, and prevent marked injustice being done.

A policy was issued to a partner in his own name and so expressed as only to cover his individual interest in the property, but he had effected the insurance for his firm and accepted the policy on the assurance of the insurer's agent that the whole partnership interest was covered by it. *Held*, that the firm were entitled to have the policy reformed in equity.

A policy of insurance against loss by fire contained a provision that, "If the situation or circumstances affecting the risk thereupon [the property] shall be so altered or changed, either by change of occupancy in the premises insured or containing property insured, or from adjacent exposure, whereby the hazard is increased, and the assured fail to notify the company; or if the title to said property shall be in any way changed * * * in every such case the risk thereupon shall cease and determine, and the policy be null and void." The cotton insured was, at the time the insurance was taken out, guarded by Federal soldiers, and was

subsequently, but without lawful authority, seized under orders of Federal officials, who subsequently retained the exclusive control and custody thereof, and guarded the same till the time of the loss: *Held*, that such change of control and custody not increasing the hazard, nor affecting the owner's title to the cotton, he was under no obligation to inform the company thereof; and, that his failure to inform the company did not avoid the policy.

THIS was a suit in equity, instituted by Thomas Snell, Samuel L. Keith and Abner Taylor, partners under the firm-name of Snell, Taylor & Co., to reform a certain policy of insurance issued by the Atlantic Fire and Marine Insurance Company of Providence, and insuring Samuel L. Keith, from December 6th 1865, at noon, to January 7th 1866, at noon, against loss or damage by fire, in the sum of $8000, on 220 bales of cotton, described as "stored in open shed at West Point, Miss.; loss, if any, payable to Messrs. Keith, Snell & Taylor."

The material allegations in the bill were as follows: That said firm, on December 6th 1865, were the owners of 220 bales of cotton, worth more than $50,000, stored at West Point, Miss., awaiting transportation to some northern market; that Keith applied in behalf of his firm to Holmes & Bro., general insurance agents at Chicago, representing several companies, including the defendant in error, to procure insurance upon all the cotton, for the benefit of the firm, in the sum of $49,500, during such time as it remained at West Point, which time was uncertain, in view of the difficulties of transportation; that Holmes & Bro., the duly accredited and authorized agents, among others, of the defendant company, did agree with Keith, acting for and in behalf of his firm, to make, grant and secure insurance in the companies by them represented, on this cotton, in the sum of $49,500, while it was stored at West Point, and until shipped to a northern market, and to receive a premium of one per cent. on the total amount insured, to wit, $495, which sum Keith agreed to pay Holmes & Bro., provided the time for the insurance did not exceed one month, but to have a decreased rate if the time exceeded one month, the agreed rate to be paid by Keith when the cotton was removed from West Point, when the extent of the insurance could be definitely fixed; that on the 6th December 1865, Holmes & Bro., with intent to carry this agreement into effect, caused to be made several policies in different companies, among them the policy sued on, making an aggregate insurance of $49,500, and, after the loss occurred, notified Keith to pay, and he did pay, the sum of $495, the premium on the whole

amount insured, $80 of which was paid to and received by the defendant in error, for and on account of his firm, and in pursuance of the agreement with Holmes & Bro.; that the policy sued on remained in the possession of Holmes & Bro. until some time after the loss; that after the loss, and before any application to adjust the same was made, Holmes & Bro., with the intent to carry out the agreement that the cotton should be insured until its shipment from West Point, filled up the policy, so that by the terms thereof the insurance extended from December 6th 1865 until January 7th 1866, at noon; that Keith was assured by Holmes & Bro., when the insurance was taken, that it was not necessary that the policy should state in terms that the insurance was for, and on account of, Snell, Taylor & Co., and that the firm would be as fully protected, and the loss would be as promptly paid, as if the policy had expressly stated that the insurance was for and on its account; that, relying upon those assurances, and ignorant that, by the terms and legal effect of the terms employed, no other interest in the cotton was insured except his, Keith took the policy into his possession, in the full belief that it covered the entire interest of the firm; that soon thereafter, upon being advised to the contrary by his attorney, he demanded of the insurance agents that the policy be corrected so as to conform to the real contract and agreement, but Holmes & Bro. refused to correct or alter the same in any way.

The prayer of the bill was that the company be decreed and ordered to correct and reform the policy by inserting therein the stipulation that the insurance was made for the benefit or for the account of Snell, Taylor & Co., and that the firm have a decree for the sum so intended to be insured on the cotton.

The insurance company filed an answer, embracing certain grounds of defence, which sufficiently appear in the opinion.

The bill upon final hearing was dismissed and from that final order this appeal is prosecuted.

The opinion of the court was delivered by

HARLAN, J.—1. We are satisfied that a valid contract of insurance was entered into, on the 6th December 1865, between Keith, representing Snell, Taylor & Co., and Holmes & Bro., representing the defendant and other insurance companies, and we entertain no serious doubt as to its terms or scope. Although there is some conflict in the testimony as to what occurred at the time the con-

tract was concluded, it is shown, to our entire satisfaction, not only that the agreed insurance covered the 220 bales of cotton, but that Holmes & Bro., with knowledge or information that the cotton was owned by Snell, Taylor & Co., and not by Keith individually, intended to insure, and, by direct statements, induced him to believe that they were giving insurance, in his name, upon the interest of the firm. He assented to the insurance being so taken in his name, because of the distinct representation and agreement that the interest of his firm in the cotton would be thereby fully protected against loss by fire so long as it remained at West Point. But according to the technical import of the words employed in the policy, which the company subsequently issued and delivered, only Keith's interest in the cotton is insured. Such is the construction which the company now insists should be put upon the policy in the event the court decides there was a binding contract of insurance. The fundamental inquiry, therefore, is whether Snell, Taylor & Co. are entitled to have the policy reformed so as to cover their interest.

We have before us a contract from which, by mistake, material stipulations have been omitted, whereby the true intent and meaning of the parties are not fully or accurately expressed. There was a definite, concluded agreement as to insurance, which, in point of time, preceded the preparation and delivery of the policy, and this is demonstrated by legal and exact evidence, which removes all doubt as to the sense and understanding of the parties. In the attempt to embody the contract in a written agreement there has been a mutual mistake, caused chiefly by that contracting party who now seeks to limit the insurance to an interest in the property less than that agreed to be insured. The written agreement did not effect that which the parties intended. That a court of equity can afford relief in such a case is, we think, well settled by the authorities. In *Simpson* v. *Vaughan*, 2 Atk. 33, Lord HARDWICKE said that a mistake was "a head of equity on which the court always relieves." In *Hankle* v. *Royal Exchange*, 1 Ves. Sr. 318, the bill sought to reform a written policy after loss had actually happened, upon the ground that it did not express the intent of the contracting parties. Lord HARDWICKE said: "No doubt but this court has jurisdiction to relieve in respect of a plain mistake in contracts in writing as well as against frauds in contracts; so that if reduced into writing contrary to the intent of the parties,

on proper proof, that would be rectified." In *Gillespie* v. *Moon*, 2 Johns. Ch. 593, Chanc. KENT examined the question both upon principle and authority, and said: "I have looked into most if not all of the cases in this branch of equity jurisdiction, and it appears to me established, and on great and essential grounds of justice, that relief can be had against any deed or contract in writing founded in mistake or fraud. The mistake may be shown by parol proof, and the relief granted to the injured party, whether he sets up the mistake affirmatively by bill, or as a defence." In the same case he said: "It appears to be the steady language of the English chancery for the last seventy years, and of all the compilers of the doctrines of that court, that a party may be admitted to show, by parol proof, a mistake, as well as fraud, in the execution of a deed or other writing." And such is the settled law of this court: *Graves* v. *Boston Mar. Ins. Co.*, 2 Cranch 443; *Insurance* v. *Wilkinson*, 13 Wall. 231; *Bradford* v. *Union Bank*, 13 How. 66; *Hearne* v. *Marine Insurance Co.*, 20 Wall. 490, 496. It would be a serious defect in the jurisdiction of courts of equity if they did not have the power to grant relief against mutual mistakes or fraud in the execution of written instruments. Of course parol proof in all such cases is to be received with great caution, and where the mistake is denied, should never be made the foundation of a decree, variant from the written contract, except it be of the clearest and most satisfactory character. Nor should relief be granted where the party seeking it has unreasonably delayed application for redress, or where the circumstances raise the presumption that he acquiesced in the written agreement, after becoming aware of the mistake. Hence, in *Graves* v. *Boston Mar. Ins. Co.*, 2 Cranch 419, this court declined to grant relief against an alleged mistake in the execution of a policy, partly because the plaintiff's agent had possession of the policy long enough to ascertain its contents, and retained it several months before alleging any mistake in its reduction to writing. But no such state of case exists here. The policy in question was retained for Keith by the insurance agents. It was not surrendered to him, and he did not see it until after the loss had happened. Immediately upon being advised by his attorney that the policy as written did not cover the interest of the firm in the cotton, but only his individual interest, Keith promptly avowed the mistake, and asked that the policy be corrected in conformity with the original agreement. There was

no such acceptance by him of the written policy as would justify the inference that he had waived any rights existing under the original agreement, or had conceded that instrument to be a correct statement of the contract of insurance.

It may be said that the mistake made out was a mistake of law, and, therefore, not reformable in equity. It was said in *Hunt* v. *Rousmanier*, 1 Peters 15, to be the general rule that a mistake of law is not a ground for reforming a deed founded on such mistake, and that the exceptions to the rule were not only few in number, but had something peculiar in their character. The chief justice, however, was careful in that case to say that it was not the intention of the court "to lay it down, that there may not be cases in which a court of equity will relieve against a plain mistake, arising from ignorance of law." He said that he had found no case in the books, in which it has been decided that a plain and acknowledged mistake in law was beyond the reach of equity. In 1 Story's Eq. Jur., sec. 138, *e* and *f*, Redfield's edition, the author, after stating certain qualifications to be observed in granting relief upon the ground of mistake of law, says that "the rule that an admitted or clearly established misapprehension of the law does create a basis for the interference of courts of equity, resting on discretion, and to be exercised only in the most unquestionable and flagrant cases, is certainly more in consonance with the best considered and best reasoned cases upon the point, both English and American." The same author says: "We trust the principle, that cases may and do occur where courts of equity feel compelled to grant relief, upon the mere ground of the misapprehension of a clear rule of law, which has so long maintained its standing among the fundamental rules of equity jurisprudence, is yet destined to afford the basis of many wise and just decrees, without infringing the general rule that mistake of law is presumptively no sufficient ground of equitable interference."

In the case under consideration the alleged mistake is proven to the entire satisfaction of the court. It is equally clear that the assent of Keith to the insurance being made in his name was superinduced by the representation of the company's agent, that insurance, in that form, would fully protect the interest of the firm in the cotton. Assuming, as we must from the evidence, that this representation was not made with any intention to mislead or entrap the assured, it is, however, evident that Keith relied upon that repre-

sentation, and, not unreasonably, relied also upon the larger experience and greater knowledge of the insurance agents in all matters concerning the proper mode of consummating, by written agreement, contracts of insurance according to the understanding of the parties. He trusted the insurance agents with the preparation of the written agreement, which should correctly express the meaning of the contracting parties. He is not chargeable with negligence because he rested in the belief that the policy would be prepared in conformity with the contract. As soon as he had a reasonable opportunity to consult counsel he discovered the mistake, and insisted upon the rights secured by the original agreement. A court of equity could not deny relief under such circumstances, without enabling the insurance company to obtain an unconscionable advantage through a mistake for which its agents were chiefly responsible. In all such cases, there being no laches on the part of the party in discovering and alleging the mistake, equity will lay hold of any additional circumstances, fully established, which will justify its interposition to prevent marked injustice being done: *Wheeler* v. *Smith*, 9 How. 82.

In deciding, therefore, as we do, that the complainants are entitled to have the policy reformed in accordance with the original agreement, it is not perceived that we enlarge or depart, in any just sense, from the general and salutary rule that a mere mistake of law, stripped of all other circumstances, constitutes no ground for the reformation of written contracts.

We have not overlooked, in this connection, that portion of the evidence which shows that Holmes & Bro., when advising the company by letter, of the contract of insurance, stated in a postscript that the insurance would be for a few days only. The officers of the company testify that they would not have permitted the contract to stand, but would have promptly cancelled the policy, had they not supposed the insurance would last but a few days. It was doubtless the belief of Keith, which he expressed to the insurance agents, that the cotton would remain at West Point for a few days only. The evidence shows that he had reasonable ground for such belief. But he seems to have guarded against disappointment in that respect by having it distinctly agreed that the insurance should last until transportation could be obtained, and the cotton shipped from West Point. That Holmes & Bro. so understood the agreement is evident from their letter of December 6th

1865, to the secretary of the defendant company, in which they state that they had taken insurance "on 220 bales of cotton stored in open shed at West Point, Miss., said cotton to remain insured from above date *till time of shipment.*" It is true that the response of the secretary shows that the company did not approve of such character of risks, but they did not repudiate the contract or require it to be cancelled, and only enjoined upon their agents "to decline such business in future." The act of the agents in filling up the blanks in the policy after the loss had occurred was manifestly in consummation of the original contract of insurance.

But independent of the issue in the pleadings, as to the mistake in reducing the contract to writing, the company defends the action and denies its liability, upon several grounds, which must now be considered.

2. The answer alleges that at the time, and prior to the alleged verbal contract of insurance, the cotton referred to in the bill was guarded, night and day, by soldiers of the United States, the shed in which the cotton was stored being occupied by such soldiers, who were in the habit of sleeping and eating their meals upon the cotton, and smoking and otherwise using fire upon and in its immediate vicinity; that those facts were material to the risk, and would, or might have influenced Holmes & Bro. and the company in taking the insurance, or in regard to the rate of premium to be charged, and that such facts, although well known to Keith when he applied for insurance, were not communicated by him to Holmes & Bro., or to the company, but were concealed, whereby the contract of insurance, whether reduced to writing correctly or not, became, and was void.

The evidence does not authorize a defence upon such grounds. The proof does not justify the belief that Keith, when applying for insurance, withheld any fact known to him and material to the risk. By the terms of the policy he was under an obligation to make a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, value and risk of the property insured, so far as the same were known to him, and were material to the risk. The same clause of the policy provides that the risk shall cease, and the policy become null and void, "if any material fact or circumstance shall not have been fairly represented." This language must, of course, be construed in connection with the preceding words of the same clause. We find no

evidence in the record showing that Keith did not fairly represent every material fact known to him. Rawley, who was within hearing of the conversation between Keith and Edgar Holmes (the active manager of the business of Holmes & Bro.), says, that while he cannot recall the language used, he is "positive that Keith explained the character of the risk. * * * I know Keith described the character of the risk fully." When Keith applied to Edgar Holmes for the insurance, the latter asked him how the cotton was stored. He replied that it was "stored in an open shed." Holmes then said to him that he did not like the manner in which it was stored, and Keith replied: "The cotton was guarded day and night." Thus were Holmes & Bro. notified of its exact condition and situation. The information that the cotton was guarded day and night, indicated that there was something in the surrounding circumstances which made a guard necessary for its safety. Indeed, if it was to remain, while under insurance, in an open shed, and at a point remote from the company's place of business, it was clearly in the interest of the insurer to have it guarded day and night. But it is said that the habits of the guard were such, at the time of the insurance, as to endanger its safety. If this were clearly proven, the evidence furnishes no ground for imputing to Keith, or Snell, or Taylor, knowledge of any habitual carelessness or misconduct upon the part of the guard, which increased the danger of the cotton being burned.

3. The answer further alleges that on the 8th December 1865, whatever cotton there was in the shed at West Point, belonging to the complainants, was seized by the United States government, or by its officers, under its orders and direction, excluding complainants thereafter from all possession and control over the cotton, and that such seizure and exclusion from possession and control were maintained until the cotton was burned; that after such seizure the shed passed to the exclusive possession of soldiers of the United States, who were in the habit of using the same for military defence, of sleeping and eating therein, and of smoking and otherwise using fire upon and in its immediate vicinity; that at the time of the alleged verbal contract of insurance, large quantities of loose cotton were lying under the flooring of the shed, which consisted of loose boards, and immediately under the cotton stored in the shed, whereby the risk of fire was greatly increased; that these facts were, each and all of them, material to the risk, and would or

might have influenced the judgment of Holmes & Co. and of the company, in regard to the continuing thereof, or in regard to the rate of premium therefor; that these facts were known to Taylor on the 8th December 1865, and in ample time before the fire to have communicated the same, and sufficiently long before to have enabled the defendant to cancel the policy and give complainants ample notice thereof; that by reason of the concealment of these facts by Taylor from the company and its agents, the policy became and was wholly void.

This defence is doubtless based upon that clause which declares that "if the situation or circumstances affecting the risk thereupon (the property) shall be so altered and changed, either by change of occupancy in the premises insured, or containing property insured, or from adjacent exposure, whereby the hazard is increased, and the assured fail to notify the company, or if the title to said property shall be in any way changed, * * * in every such case the risk thereupon shall cease and determine, and the policy be null and void."

It will be observed that no alteration or change in the occupancy of the premises containing the insured property avoids the policy, in the absence of notice to the insurer, unless it be such alteration or change as increased the hazard. We have already seen that the company's agents were informed, when the contract was made, that the cotton was guarded by day and by night. There was no change in the character of the guard, except that prior to December 8th 1865, it was guarded by Federal soldiers, as a personal favor to Taylor, while after that date it was guarded by the same soldiers under an order from Federal officers for the seizure of the cotton. There is some evidence that the soldiers were, at times, negligent and careless, but we are not satisfied that their conduct in and about the property was such as to increase the hazard. The strong presumption is that, in view of the peculiar condition of public sentiment at West Point and its vicinity, against Taylor and others who had been officially connected with the seizure and collection of cotton, under treasury regulations, the presence of Federal soldiers largely decreased, rather than increased, the hazard, and was, therefore, for the benefit of all parties interested in its preservation. We attach no weight to its seizure, under orders of Federal officers, as, in and of itself, affecting the rights of the assured. It appears satisfactorily from the evidence that it had been purchased

by Taylor for the firm of which he was a member, and with money furnished for that purpose by the firm. It does not appear that any of the cotton claimed by him for the firm, did, in fact, belong to the United States, or that it had become forfeited to the United States by reason of his violation of the laws of the United States, or of treasury regulations made in pursuance of such laws. Nor does it appear that he caused or promoted its seizure by officers of the United States. So far as the record shows, it was an unauthorized seizure of the private property of the citizen, caused by the personal hostility towards Taylor of one who had himself been suspended from his position as a treasury cotton agent, through the influence or machinations, as he suspected or believed, of Taylor. If, as alleged, the cotton, upon its seizure, passed from the control of the owner to the exclusive possession and control, for the time, of Federal officers, such change of control and possession did not, by the terms of the policy, impose upon the insured the duty of communicating to the company the fact of such change. It was only when the change in the surrounding circumstances increased the hazard that the assured was, by the terms of the policy, under an obligation to inform the company thereof. If the seizure of the cotton had involved a change in the title to the property, then the company could have elected to avoid the policy, since it contains express stipulations to that effect. But, as already said, the record furnishes no evidence of any change in title, but only a change of possession and control, without the assent, and, perhaps, beyond the power of the owner to prevent, and which does not clearly appear to have increased the hazard.

4. We come now to the only remaining question which it seems necessary to consider, viz., the quantity of cotton in the shed, belonging to Snell, Taylor & Co., at the time of the fire. * * *

[Here the judge reviewed the evidence upon the question of fact, not of any general interest.]

The decree of the court below is reversed, with directions to enter a final decree in conformity with this opinion.

The general maxim that ignorance or mistake of the law is no excuse, either for a breach, or for an omission of duty, is well settled, both at law and in equity. The maxim does not, however, apply to the laws of another state or country, mistakes as to the laws of which stand upon the same footing as mistakes of fact: *Haven* v. *Foster*, 9 Pick. 130; *Kenny* v. *Clarkson*, 1 John. 385; *McCormick* v. *Garnett*, 5 DeG., M. & G. 278. It was said also, by Lord WESTBURY, in *Cooper* v. *Phibbs*, L. R. 2 H. L. 170, that the maxim applies only to the

general law of the country, and not to mere private right, *e. g.* title to property; and that private right of ownership is a matter of fact; a distinction which will be again referred to further on. Although, however, the authorities generally lay down the rule, that, where there has been a full knowledge of all the facts, equity will not relieve against mere mistakes in matters of law (1 Story's Eq. Jur. §§ 113, 116; Snell's Eq. (4th ed.) 428; Willard's Eq. Jur. *60), there are certain exceptional cases, and the true boundaries of the rule in equity seem involved in considerable doubt. The rule is laid down by Judge STORY (1 Eq. Jur. § 116), that "Agreements made and acts done under a mistake of law are (if not otherwise objectionable) generally held valid and obligatory;" "that a mistake of law is not ground for reforming a deed founded on such mistake. And, whatever exceptions there may be to this rule, they are not only few in number, but they will be found to have something peculiar in their character, and to involve other elements of decision." See, also, 1 Story's Eq. Jur. § 137; Willard's Eq. Jur. *60; *Hurd* v. *Hall*, 12 Wisc. 124; *Jordan* v. *Stevens*, 51 Me. 81.

The cases usually mentioned as exceptions are:

(1) Where a party has acted under a misconception as to, or ignorance of, his title to the property, respecting which some agreement has been made, or conveyance executed, as to which, so far as concerns mistakes of law, Judge STORY remarks: "That many, although not all of the cases, will be found to have turned, not upon the consideration of a mere mistake of law, stripped of all other circumstances, but upon an admixture of other ingredients going to establish misrepresentation, imposition, undue confidence, undue influence, mental imbecility, or that sort of surprise which equity uniformly regards as a just foundation for relief:" 1 Story's Eq. Jur. § 120. See, also, *Whelen's Appeal*, 70 Penn. St. 410, 427.

Under this head comes the doctrine, that, where a party, acting in ignorance of a plain and settled principle of law, is induced to give up a portion of his undisputed property to another, under the name of a compromise, equity will relieve him from the effects of his mistake: 1 Story's Eq. Jur. § 121; *Freeman* v. *Curtis*, 51 Me. 140. See also Willard's Eq. Jur. (Potter's ed.) *68; as to which Judge STORY's explanation is, that, where the party acts upon the misapprehension that he has no title at all to the property, it seems to involve in some measure a mistake of fact of ownership, arising from a mistake of law; (see also *Cooper* v. *Phibbs*, *supra*; *Freeman* v. *Curtis*, *supra*); and that the case of a mistake of a plain and understood rule of property might well give rise to a presumption that there has been some undue influence, imposition, mental imbecility, surprise, or confidence abused, in which case the mistake of law is not the foundation of relief, but only the medium of proof to establish some other proper ground of relief: 1 Story's Eq. Jur. §§ 122, 128, 130; Snell's Eq. (4th ed.) 429. The first explanation seems unsatisfactory, and concerning it Judge REDFIELD has well said: (1 Story's Eq. Jur. (Redfield's ed.) § 130 note, § 138 *a*), that "the idea of there existing in this class of cases a mistake of fact as well as of law, might, perhaps with equal force apply to all cases of mistake of law. The true state of the law is always a fact. * * * * In regard to the law of the place of the forum, both the court and the parties are presumed to know it, and are bound to take notice of it. It is rather upon this ground, we apprehend, that courts of equity decline to interfere and grant relief upon the basis of alleged mistakes of the law of the forum, than because there is any inherent difference between

a *bona fide* misapprehension of law and of fact, or between the mistake of the law of the forum and that of a foreign state. * * * The distinction between mistakes of law and of fact, so far as equitable relief is concerned, is one of policy rather than principle." See *Jordan* v. *Stevens*, 51 Me. 80. It may also be observed of the first of Judge STORY'S explanations, above quoted, that, if allowed its proper latitude, it would, as it seems, annihilate all distinction between mistakes of law and of fact.

The cases upon this point have, also, been attempted to be reconciled upon the distinction, before alluded to, between the word *jus*, as used to indicate general law, and the same word as employed to denote private right, a mistake as to the general law being irremediable in equity, while a mistake in regard to individual rights may, it is said, under certain circumstances be redressed: *Cooper* v. *Phibbs*, *supra*; Bisp. Eq. (2d ed.) sect. 187. Whatever may be the explanation of the before stated doctrine as to compromises, the exception itself seems settled upon authority: *Naylor* v. *Winch*, 1 Sim. & Stu. 555; *Jones* v. *Munroe*, 32 Geo. 188; *Freeman* v. *Curtis*, *supra*, 1 Story's Eq. Jur. § 121.

(2) Another apparent exception is where, through ignorance or mistake of the law as to the proper mode of framing the instrument, there has been a defective execution of the intent of the parties, in which case equity will grant relief: 1 Story's Equity Jur. § 136; *Pitcher* v. *Hennessey*, 48 N. Y. 424; *Maher* v. *Hibernia Ins. Co.*, 67 Id. 283; *Sparks* v. *Pittman*, 51 Miss. 511; *Longhurst* v. *Star Ins. Co.*, 19 Iowa 364; *Pickett* v. *Merchants' Nat. Bank*, 32 Ark. 346; *Hunt* v. *Rousmaniere*, 1 Pet. 13; *Stover* v. *Poole*, 67 Me. 217, 223; *Adams* v. *Stevens*, 49 Id. 362; *Woodbury Savings Bank* v. *Charter Oak Ins. Co.*, 31 Conn. 517; *Oliver* v. *Mut. Com. Ins. Co.*, 2 Curt. C. C. 277; *Larkins* v. *Biddle*, 21 Ala. 252; *Evants* v. *Strode*, 11 Ohio 480; *Stockbridge Iron Co.* v. *Hudson Iron Co.*, 107 Mass. 290; *Beardsley* v. *Knight*, 10 Verm. 185; *Green* v. *Morris, &c., Railroad*, 12 N. J. Eq. 165; *Canedy* v. *Marcy*, 13 Gray 373; *Champlin* v. *Laytin*, 1 Edw. Ch. 467; s. c. 6 Paige 189; 18 Wend. 407. See, also, *Cockerell* v. *Cholmeley*, 1 Russ. & Myl. 418; *State* v. *Paup*, 13 Ark. 129.

Subject to the above exceptions, it may perhaps be considered as settled by authority that a mere mistake in matter of general law (as distinguished from private right), stripped of all other circumstances, is not ground for reforming a written contract founded on such mistake: 1 Story's Eq. Jur. (Redfield's ed.) §§ 113, 138–138 *b*; *Bank of United States* v. *Daniel*, 12 Pet. 32, 55, 56; *Stover* v. *Poole*, 67 Me. 217; *Glenn* v. *Statler*, 42 Iowa 107. Judge STORY states (1 Equity Jur. § 138) that the present disposition of courts of equity is to narrow rather than to enlarge the operation of the exception. See, also, Snell's Eq. (4th ed.) 428, 429; 1 Story's Equity Jur. § 120; Willard's Eq. Jur. *60, 64. Judge REDFIELD seems to favor a more liberal view—though he is not very definite in stating the limits of the exceptions; see 1 Story's Eq. Jur. (Redfield's ed.) 138 *a*–138 *l*—and sums up the principles applicable to mistakes in law by stating that "where the mistake is of so fundamental a nature that the minds of the parties have never in fact met, or where an unconscionable advantage has been gained by mere mistake or misapprehension, and there was no gross negligence on the part of the plaintiff, either in falling into the error, or in not sooner claiming redress, and no intervening rights have accrued, and the parties may still be placed *in statu quo*, equity will interfere in its discretion to prevent intolerable injustice." See, also, *Stover* v. *Poole*, 67 Me. 217, 223. The above may probably be considered as definite a statement of the law upon the

subject as the present state of the authorities will warrant, the rule being as yet not entirely settled.

Courts of equity however, as stated in the principal case, will be vigilant to lay hold of any extraneous circumstances which will justify their interposition to prevent marked injustice being done: 1 Story's Eq. Jur. (Redfield's ed.) § 138 *c*, note; Bisp. Eq. (2d ed.) § 188. They will relieve against a mistake of law even when brought about by innocent misrepresentation. (See the cases cited at the end of this note.) And where a mistake is manifest, and it is doubtful whether it is a mistake of law or of fact, they will presume it to be a mistake of fact, until it is shown that all the facts were known: *Hurd* v. *Hall*, 12 Wis. 112, 131.

Returning to the principal case, it seems to be very clearly correct; for, as stated by the court, "The written agreement did not effect that which the parties intended," and had previously agreed upon; which would bring the case within the second class of cases above referred to. Moreover, the mistake was induced by the representation of the insurance agent that the policy as written would fully protect the interest of the firm; and, as we have seen, a mistake of law, caused by misrepresentation, though innocent, is a ground of equitable relief: see *Woodbury Savings Bank* v. *Charter Oak Ins. Co.*, 31 Conn. 517; *Longhurst* v. *Star Ins. Co.* 19 Iowa 364; *Jordan* v. *Stevens*, 51 Me. 78; *Freeman* v. *Curtis*, Id. 140; *Green* v. *Morris, &c. R. R.*, 12 N. J. Eq. 165.

MARSHALL D. EWELL.

Supreme Court of Michigan.

JOHN McEWEN *v.* CHARLES ZIMMER.

By a statute of the dominion of Canada, a judgment is permitted to be rendered against a person resident abroad, on a service made upon him out of the dominion. A citizen of Michigan was sued in Canada and service of process made in Michigan. He did not appear in the suit, and judgment was taken by default. Suit being brought on the judgment in Michigan, *Held*, that it was a nullity.

No sovereignty can subject persons not within its limits to the jurisdiction of its courts by constructive service, or by service made within the limits of another sovereignty.

THIS was an action upon a judgment purporting to have been rendered by the county court of county Essex, in the Province of Ontario, Dominion of Canada, in favor of McEwen against Zimmer. The only question which the record presented was one of jurisdiction in the county court of Essex to render the judgment, and this arose upon the service which was made upon the defendant. Zimmer was proceeded against as a non-resident under certain provisions of the statutes, known as the Consolidated Statutes of Upper Canada, by which upon a cause of action arising in Upper Canada a writ is allowed to be issued and served upon the defendant outside the jurisdiction of Canada, and upon such service the action may proceed to judgment.